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STATE LAND LEASING

Subchapter 9

Real Estate Management Projects

36.25.901 DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

- (1) "Board" means the state Board of Land Commissioners.
- (2) "Bureau" means the Real Estate Management Bureau of the Trust Lands Management Division of the Department of Natural Resources and Conservation.
- (3) "Cluster development" means a subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.
- (4) "Commercial" means the operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.
- (5) "Conservation" means a primary land use for open space, preservation of habitat, natural areas, parks, or related public purposes, secured through dedication, lease, license, easement, deed restriction, or other legal instrument consistent with 77-1-203, MCA, for multiple use management.
- (6) "Conservation entity" means a public entity or private organization qualified per Title 76, chapter 6, MCA, to acquire or designate interests and rights in real property to provide or preserve open space.
- (7) "Department" means the Department of Natural Resources and Conservation.
- (8) "Developed" means when a building permit, septic permit, or a permit to connect to a public sewer system, whichever comes first, has been issued for 25 percent or more of the commercial, industrial, or residential lots of a subdivided tract. Developed also means a permit has been issued for the construction of a private sewer system.
- (9) "Division" means the Trust Land Management Division of the department.
- (10) "Easement" means land use authorization as defined in 77-2-101, MCA.
- (11) "Entitlement" means an approval or permit obtained from a local government that provides a right to annex, zone, or subdivide a tract of land.
- (12) "Environmental review" means a written document as defined in 75-1-220(4), MCA.
- (13) "Growth policy" means a document adopted under Title 76, chapter 1, part 6, MCA.
- (14) "Industrial" means a land use that includes manufacturing, wholesaling, warehousing, utilities, heavy transportation, sanitary landfills, sewage treatment facilities, wind farms, feedlots, grain storage bins, irrigation facilities, reclamation projects, electrical substations, intermodal shipping facilities, and other uses.

(15) "Isolated tract or land" means any state land not possessing a legal right of access by the public, as provided in 77-2-361(1), MCA.

(16) "Joint venture" means a partnership between the department and another entity or entities to undertake a development project, each contributing equity and sharing in the revenues, expenses, and control of the project.

(17) "Land classification" means categorizing land according to its principal value, as defined in 77-1-401, MCA.

(18) "Lease" means a contract by which the board conveys a limited property interest in state lands for a term of years, for a specified rental, and for a use for which the land is classified.

(19) "License" means a contract by which the department conveys a limited property interest in state lands for a specific term and fee, and for a use other than that for which the land is classified.

(20) "MEPA" means The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA.

(21) "Other (land)" means a land classification that encompasses residential, commercial, industrial, and conservation uses.

(22) "Public entity" means a federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.

(23) "Public facility" means a building or area operated by a public entity.

(24) "Purchase of development rights" means acquiring one or more of the fee-simple interests associated with a parcel of land, such as the commercial or residential development rights.

(25) "Rate of return" means the ratio of income received from a project relative to the value of the asset or equity contribution, expressed as a percentage.

(26) "Real estate activities" means the following:

- (a) land sales and land banking;
- (b) land exchanges;
- (c) issuance of easements;
- (d) issuance of leases;
- (e) issuance of land use licenses;
- (f) marketing of state trust lands proposed for lease, license, or easement, sale, or exchange;
- (g) requests for proposals;
- (h) planning and design;
- (i) surveying and platting;
- (j) development of entitlements;
- (k) extension of services and infrastructure;
- (l) contracting for services;
- (m) environmental review; and
- (n) minor repairs, operation or maintenance of existing equipment, improvements, or facilities.

(27) "Real Estate Management Plan (plan)" means the PEIS for real estate for the department and the associated Record of Decision (ROD) approved July 18, 2005.

(28) "Real estate project" means a proposal initiated by the bureau to develop state trust land for a commercial, industrial, residential, or conservation use, or a public facility where no such use existed previously, when one or more of the following are required by a local government:

(a) subdivision approval;
(b) annexation; or
(c) development or amendment of a growth policy or neighborhood plan. Real estate project also means the development of entitlements on state trust lands proposed for sale or exchange.

(29) "Receiving area" means land that receives additional development rights from land within a sending area. This is a component of a program providing for the transfer of development rights.

(30) "Residential" means single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other types of residential uses.

(31) "Rural" means a tract that does not meet the criteria for an urban tract.

(32) "Sending area" means land that provides additional development rights to other land within a receiving area. This is a component of a program providing for the transfer of development rights.

(33) "Subdivision" means a division of land defined by Title 76, MCA.

(34) "Subdivision review" means a city, town, or county governing body evaluating a subdivision proposal for compliance with the jurisdiction's subdivision regulations.

(35) "Threshold" means a predefined number of state trust land acres to be developed for commercial, industrial, or residential uses that, if met before July 18, 2025, may require a review of the programmatic plan.

(36) "Tract" means a parcel of state trust land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(37) "Transfer of development rights" means separating some or all of the development rights from a parcel of land in a "sending area" and transferring those rights to a parcel in a "receiving area," where additional development density is allowed.

(38) "Urban" means a tract meeting one or more of the following criteria:

(a) within the boundaries of an incorporated city or town;

(b) within 4.5 miles of the boundaries of an incorporated city or town;

(c) within a public sewer or water district; or

(d) within one mile of the boundaries of a public sewer or water district. An entire tract of state trust land is urban if any portion of the tract falls within an area described in (38)(a) through (d).

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-904, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.902 ACCOUNTABLE PARTIES

(1) The board adopts the rules in this subchapter to provide the Trust Land Management Division of the Montana Department of Natural Resources and Conservation with consistent policy, direction, and guidance when selecting and implementing real estate projects on state trust lands.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-904, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.903 GENERAL APPLICABILITY

(1) The Real Estate Management Plan (plan) rules, ARM 36.25.901 through 36.25.918, implement the Programmatic Environmental Impact Statement (PEIS) and the associated Record of Decision (ROD) adopted July 18, 2005.

(2) The rules apply to real estate projects, sales, and exchanges administered by the bureau on state trust lands, except for the following:

(a) real estate projects that, prior to July 18, 2005, have been subject to public scoping and environmental review processes under MEPA, section 75-1-201, et seq., MCA;

(b) real estate projects that received all local government approvals necessary for the completion of the real estate project on or before December 15, 2008;

(c) lease lots created prior to July 18, 2005;

(d) land use licenses;

(e) sales and exchanges closed on or before July 18, 2005; and

(f) real estate activities within navigable waterways of the state.

(3) These rules remain in effect until July 18, 2025, whereupon they shall expire.

History: 77-1-209, 77-1-301, 77-1-603, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.904 GENERAL DEVELOPMENT STANDARDS

(1) The department will actively pursue commercial, industrial, residential, and conservation uses to increase revenue on trust lands, through one or more of the following means:

(a) targeting those tracts most suitable for development;

(b) improving entitlements on tracts selected for sale or development, when appropriate; or

(c) prioritizing projects with the highest financial return per acre.

(2) The department will give priority to urban real estate projects over rural real estate projects using the following criteria:

(a) financial rate of return per acre;

(b) funding availability; and

(c) the acres remaining in the development thresholds described in ARM

36.25.911.

(3) The department will comply with local and state land use regulations. The department will apply the following development standards in selecting, prioritizing, designing, and implementing real estate projects on state trust lands:

(a) real estate projects should be contiguous to or part of existing or proposed development;

(b) real estate projects in urban locations must connect to existing or planned public infrastructure and be designed to public standards, including alignment to adjoining public and private streets, that are consistent with local land use regulations;

(c) urban real estate projects should achieve urban densities consistent with local land use regulations;

(d) the department will promote mixed use in urban locations through planned-unit development or other means provided by local land-use regulations;

(e) the department will utilize local land use planning and regulatory processes to involve the general public and beneficiaries in developing state trust lands for commercial, industrial, residential, and conservation uses;

(f) the department will coordinate environmental review with local regulatory review;

(g) the department may use or promote purchase of development rights, transfer of development rights, cluster development, joint ventures, or other measures as provided by law;

(h) the department will coordinate with local communities, other state and federal agencies, conservation agencies, and other interest groups to provide for notice and review as necessary ; and

(i) the department will exclude from consideration, or employ necessary measures to avoid, minimize, or mitigate impacts potentially resulting from commercial, industrial, and residential real estate projects:

(i) on slopes greater than 25 percent;

(ii) in a designated 100-year floodplain or wetland. The department will avoid adverse impacts in the floodplain. Adverse impacts will be determined by the department through an environmental review in compliance with Title 75, chapter 1, MCA;

(iii) that potentially affect federally listed threatened and endangered species or designated critical habitat; and

(iv) in a designated wildland-urban interface or area of high wildfire hazard.

(4) Any commercial, industrial, or residential lease expected to generate annual revenue in excess of \$50,000 may not be issued without the board's prior approval.

(a) The board delegates its authority to the department to issue commercial or industrial leases expected to generate \$50,000 or less annually, but the board reserves the authority to subsequently review the issuance of such leases.

(5) Development in rural areas will include commercial resorts, development for public purposes such as sewer or water, natural resource based development, and conservation opportunities. Other unique development opportunities may be considered when the intended uses:

(a) provide infill opportunities;

(b) are contiguous to existing development;

(c) are or can be located within a sewer or water utility service area;

(d) add value to the existing uses;

(e) demonstrate economic viability and conform to applicable development standards; or

(f) limit development to not more than 25 percent of a tract while the remainder of the tract is designated for conservation through an easement, deed restriction, or dedication at final subdivision approval.

History: 77-1-209, 77-1-301, 77-1-603, MCA; IMP, 77-1-605, 77-1-904, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.905 PROJECT EVALUATION, REVIEW, AND SELECTION PROCESS

(1) ARM 36.25.906 through 36.25.910 describe the evaluation, review, and selection process for real estate projects on state trust lands.

(2) The department will require ARM 36.25.906 through 36.25.910 for real estate projects approved by the project identification team after December 25, 2008 (3) The department will not require ARM 36.25.906 through 36.25.910 for an individual real estate activity that is associated with a previously approved real estate project.

History: 77-1-209, 77-1-301, 77-1-603, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.906 SITE-SPECIFIC EVALUATION

(1) The department will conduct a site-specific evaluation to assess the suitability of a tract or portion of a tract proposed for a real estate project. The site-specific evaluation will include the following factors:

- (a) unique or sensitive biological and physical features;
 - (b) topography;
 - (c) influence of floodplains and/or wetlands;
 - (d) hazardous geologic conditions;
 - (e) known cultural or historic features through a preliminary cultural survey;
 - (f) proximity to other public lands or private lands under conservation easement, as documented by information in the Montana Natural Heritage Program database or similar source;
 - (g) water availability and water rights;
 - (h) existing and required access;
 - (i) the location and quality of infrastructure, such as roads, utilities, power, telephone, public water, or sewer availability;
 - (j) any existing encumbrances;
 - (k) proximity to community infrastructure and utilities;
 - (l) other nearby residential, industrial, or commercial development, proposed or existing; and
 - (m) wildland fire hazards and available fire protection.
- (2) The department will analyze federal, state, and local land-use regulations, plans, and policies, for their relationship to the proposed real estate project. This analysis must identify existing entitlements and any entitlements that must be acquired for the proposed real estate project to achieve the highest return.
- (3) The department may conduct a market analysis for a parcel proposed for commercial, industrial, residential, or conservation use. At minimum, the market analysis must identify:
- (a) the size of the current and future market;
 - (b) market-growth trends, historic and future; and
 - (c) expected rate of return.

History: 77-1-209, 77-1-301, 77-1-603, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.907 SITE SELECTION REPORT

- (1) Field staff will develop a site selection report for each real estate project proposal that will include these elements:
- (a) how the proposed real estate project conforms to the standards in ARM 36.25.904;
 - (b) description of the proposed real estate project, including proposed land use, density, existing and proposed entitlements, required infrastructure improvements, local regulatory approval required, and potential rates of return from the real estate project, if implemented;
 - (c) how the proposed real estate project relates to ARM 36.25.911 and 36.25.912;
 - (d) results of the site-specific evaluation;
 - (e) estimate of the costs and timeline for the proposed real estate project; and
 - (f) how the proposed real estate project integrates with other trust land management projects or programs.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.908 PROJECT IDENTIFICATION TEAM AND PROJECT REVIEW COMMITTEE

(1) The department will form a project identification team, comprised of bureau staff and field representatives. The project identification team will meet annually, at minimum. The duties of the project identification team will include:

- (a) reviewing and selecting real estate projects proposed by field staff;
- (b) reviewing the status of previously selected real estate projects;
- (c) canceling previously selected real estate projects; and
- (d) assigning resources.

(2) The project identification team will select real estate projects based upon review of the site selection reports developed by field staff under ARM 36.25.907, in consideration of the following criteria:

- (a) conformance to the standards in ARM 36.25.904;
- (b) relationship to ARM 36.25.911 and 36.25.912;
- (c) results of the site-specific evaluation;
- (d) results of the market analysis, as described in ARM 36.25.906(3);
- (e) staffing and funding needs and limitations;
- (f) project complexity;
- (g) project timeline; and
- (h) how the proposed real estate project integrates with other trust land

management projects or programs.

(3) The department will form a project review committee, comprised of bureau staff and planning and land use staff from each area office. The project review committee will meet annually, at minimum. The duties of the project review committee will generally include:

- (a) reviewing the status of previously selected real estate projects;
- (b) assessing resource needs of real estate projects; and
- (c) recommending project proposals to the real estate project identification team.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.909 PROJECT MANAGEMENT LIST

(1) The department will create a project management list of the real estate projects selected by the project identification team. The list will identify new real estate projects, existing or previously approved real estate projects, and canceled real estate projects.

(2) The department will create and maintain a list of persons, conservation entities, and other organizations interested in receiving notice of new real estate projects.

(3) Within 30 days of the project identification team's selection of new real estate projects, the department will:

- (a) provide the project management list to the board;
- (b) provide a list of new real estate projects to interested persons who have made a request to the department to be informed of new real estate projects; and
- (c) post the project management list on the department's web site.

(4) The department will notify affected lessees and licensees and local governments having jurisdiction over the area of a selected real estate project.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.910 NOTIFICATION OF CONSERVATION INTEREST

(1) After providing notice of new real estate projects pursuant to ARM 36.25.909, the department shall allow conservation entities 60 days in which to propose a conservation use of those lands by issuing a letter of intent to the department. By such a letter of intent, an entity may seek to secure for conservation uses any tract or portion of a tract proposed by the project identification team for a residential, industrial, or commercial use.

(2) A conservation entity submitting a letter of conservation intent during the 60 days has an additional 45 days in which to apply to the department for a lease, license, easement, or other approved legal instrument to secure conservation use, as approved by the department. The 45 days begin on the day following the last day of the 60-day period. An entity applying within the 45-day period has 12 months to secure conservation use. The department may extend the 12 month period.

(a) Issuance of a conservation lease, license, or easement shall be made pursuant to Article X, section 11 of the Montana Constitution. The department reserves the right to approve or deny a proposal for a conservation use.

(b) The department may require bonding, letter of credit, or nonrefundable deposit as part of the application for a conservation use.

(3) Any real estate project on the project management list may proceed forward if:

(a) the department receives no letter of intent within the 60-day period;

(b) a conservation entity submits a letter of intent within the 60 days but fails to apply to the department within the subsequent 45 days; or

(c) a conservation entity submits a letter of intent and application within the applicable periods but fails to secure conservation use on the subject property within 12 months, unless the department has granted an extension.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.911 NEW DEVELOPMENT THRESHOLDS

(1) The statewide threshold is 30,000 acres. The department will conduct a review of the plan as specified in ARM 36.25.914(2) if the aggregate acreage of real estate projects, sales, and exchanges meeting the criteria described in ARM 36.25.916(2) exceeds the statewide threshold, or is anticipated to exceed the statewide threshold during the term of the programmatic plan.

(a) Five percent of the statewide threshold, termed the rural threshold, is allocated for rural real estate projects, sales, and exchanges. The rural threshold is 1500 acres. The department will conduct a review of the programmatic plan as specified in ARM 36.25.914(2) if the aggregate acreage of real estate projects, sales, and exchanges in rural areas meeting the criteria described in ARM 36.25.916(2) exceeds the rural threshold or is anticipated to exceed the rural threshold during the term of the programmatic plan.

(2) The following, unless otherwise exempted in ARM 36.25.912, will count toward the applicable thresholds in (1) and (1)(a):

(a) tracts leased or under easement for commercial and industrial uses;

(b) tracts leased or under easement for residential uses at a density greater than one residential unit per 25 acres;

(c) tracts disposed of through sale or exchange and developed within five years following sale for a commercial or industrial use; and

(d) tracts disposed of through sale or exchange and subdivided within five years following sale for residential use where the planned density is greater than one residential unit per 25 acres.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.912 NEW DEVELOPMENT THRESHOLD EXEMPTIONS

(1) An urban tract meeting any one of the following criteria will be exempt from the statewide threshold in ARM 36.25.911(1). A rural tract meeting any one of the following criteria will be exempt from the rural threshold in ARM 36.25.911(1)(a) and the statewide threshold in ARM 36.25.911(1):

(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, public benefit, or for a private sewer or water system;

(b) acres under lease or easement for communications facilities, or for wind, geothermal, or solar power generation;

(c) acres under easement for public or private rights-of-way;

(d) a tract developed for commercial, residential, or industrial uses through lease or easement or following sale or exchange, whereby such uses are clustered on not more than 25 percent of a tract and the remainder of the tract is designated for conservation in perpetuity through an easement, deed restriction, or dedication upon final subdivision approval;

(e) a tract developed for residential lease or easement, or disposed of through sale or exchange, with restrictions limiting residential density to one residential unit per 25 acres;

(f) a tract sold or exchanged and not developed until after five years following the sale closing date;

(g) an isolated tracts sold or exchanged except in Beaverhead, Broadwater, Carbon, Cascade, Flathead, Gallatin, Lewis and Clark, Lake, Madison, Missoula, Park, Powell, Ravalli, Stillwater, Sweet Grass, Teton, and Yellowstone counties;

(h) acres dedicated for conservation upon final subdivision approval review in excess of minimum state or local subdivision requirements;

(i) a tract within a receiving area established by a local jurisdiction as part of a transfer of development rights program, and developed for commercial, industrial, or residential use by means of development rights permanently transferred from land in the sending area; and

(j) a tract developed for residential use at a density greater than one unit per 25 acres when the potential density of one or more additional tracts is reduced in perpetuity by an equal or greater amount, such that the combined development density of all tracts is not greater than one unit per 25 acres. This exemption applies to lands for lease, easement, exchange, or sale, and includes lands receiving final subdivision approval within five years following sale.

(2) A rural tract that is not otherwise exempt from the rural and statewide threshold as provided in (1) will be exempt from the rural threshold but will still count toward the statewide threshold when one of the following criteria are met:

(a) the tract is developed consistent with zoning adopted by the county's governing body in compliance with Title 76, chapter 2, part 1 or part 2, MCA; or

(b) the developed use meets all of the following:

- (i) provides infill opportunities;
- (ii) is contiguous to existing development;
- (iii) is or can be located within a sewer or water utility service area;
- (iv) adds value to existing uses;
- (v) demonstrates economic viability; and
- (vi) conforms to the development standards in ARM 36.25.904.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.913 ACCOUNTING AND REPORTING

(1) The department will account for real estate management activities that meet ARM 36.25.910 and 36.25.912. In addition, the department will account for the following:

- (a) acres under commercial, industrial, or residential lease where no commercial, industrial, or residential lease existed previously;
- (b) acres under easement for commercial, industrial, or residential use;
- (c) nonisolated tracts sold and developed for a commercial, industrial, or residential use within five years of sale;
- (d) tracts acquired with existing commercial, industrial, or residential development;
- (e) tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;
- (f) nonisolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;
- (g) acres dedicated as open space during subdivision review in excess of minimum requirement; and
- (h) acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.

(2) The department may account for other land use, development, and disposition in other department documentation, such as annual reports.

(3) The department will report the results of the accounting to the board by August 2010 and every five years thereafter.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.914 MANAGEMENT OF THE REAL ESTATE MANAGEMENT PLAN

(1) In July 2010 and every five years thereafter, the bureau will issue a report upon the implementation and effectiveness of the plan, including a recommendation on the need for significant changes to the plan.

(2) Upon review of such reports, the board or the department may consider a review of the programmatic plan for any of the following reasons:

- (a) the thresholds in ARM 36.25.911(1) or (1)(a) have been exceeded;
- (b) new legislation is adopted that is incompatible with the selected alternative;
- (c) the board provides new direction; or
- (d) the Trust Land Management Division administrator judges that the original assumptions supporting the plan no longer apply.

(3) The department may implement and initiate real estate projects during a review of the programmatic plan pursuant to ARM 36.2.537.

(4) The department may make minor changes or additions to the plan without a review of the entire programmatic plan, as long as those changes are compatible with the overall plan, as determined by the department.

(a) Cumulative minor changes may result in the department's review of the programmatic plan.

History: 77-1-209, 77-1-301, 77-1-603, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.915 MINIMUM LEASE CALCULATION

(1) Pursuant to 77-1-905(2), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is two percentage points a year less than the current federally-guaranteed, annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet. For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, 77-1-912, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.916 DELEGATION OF AUTHORITY TO DEPARTMENT FOR SURVEYING, PLATTING, AND EXACTIONS

(1) The board delegates to the department, subject to its review, its authority under 77-1-301, 77-2-309, and 77-2-310, MCA, to determine whether it is in the best interest of the trust beneficiaries to survey, plat, or create blocks and lots of state lands prior to sale.

(2) The board delegates to the department, consistent with the board's fiduciary duties and subject to the board's review, its authority to agree to exactions, conditions, restrictions, or fees imposed as a result of zoning, annexation, subdivision, or building permit approval processes within Title 7, 50, 67, or 76, MCA, or local land use regulations.

History: 77-1-301, 77-1-309, 77-1-310, MCA; IMP, 77-1-301, 77-1-309, 77-1-310, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.917 APPRAISAL OF LAND PRIOR TO LEASE OR EASEMENT

(1) The value of a parcel under consideration for lease or issuance of an easement shall be determined through an appraisal or limited valuation.

(2) An appraisal must include state-owned improvements in the valuation and use comparable sales for like-properties. The department may conduct an appraisal or appraisal update; or the department may contract with a Montana-licensed certified general appraiser. The department shall review and approve an appraisal or appraisal update conducted by a contract appraiser.

(3) A limited valuation is an estimation of value through other means which may include:

- (a) the department's fee schedule;
- (b) a survey of real estate appraisers, local tax assessors, or local realtors; or
- (c) an evaluation of local rents or local market fees.
- (4) An appraisal or limited valuation must be updated, or the parcel reappraised:

- (a) where issuing a lease, if the appraisal or limited valuation is older than two years; and
- (b) where issuing an easement, if the appraisal or limited valuation is older than one year. An appraisal or limited valuation may be updated or the parcel reappraised earlier than as required in (4)(a) and this subsection.

History: 77-1-209, 77-1-301, MCA; IMP, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

36.25.918 CATEGORICAL EXCLUSIONS

(1) Pursuant to 77-1-121, MCA, and ARM 36.2.523(5), the board adopts the following additional categorical exclusions for real estate management activities conducted upon state trust lands:

- (a) lease and license administration including review, inspection, amendments, assignments, renewals, and enforcement of terms and conditions;
 - (b) department review and approval of lease or license modifications, improvements, removal of improvements, and new utility service connections, consistent with applicable regulations;
 - (c) adjustments to the boundaries of existing leases or licenses, consistent with applicable regulations;
 - (d) project planning and design;
 - (e) project evaluation under ARM 36.25.906;
 - (f) development of a site selection report under ARM 36.25.907;
 - (g) project selection under ARM 36.25.908;
 - (h) development of the project management list under ARM 36.25.909;
 - (i) marketing of state trust lands proposed for lease, license, or easement;
 - (j) short-term land use licenses, involving no resource extraction or developed uses, and conforming to local permitting and land use regulations;
 - (k) other real estate management activities administered by the bureau on state trust lands that are not in connection to:
 - (i) a department proposal for a sale, exchange, easement, placement of improvement, lease, license, or permit; or
 - (ii) a department review of an application for authorization of a sale, exchange, easement, placement of improvement, lease, license, or permit ;
 - (l) department request to amend a local growth policy or zoning regulation;
 - (m) department request to amend or develop a neighborhood plan or extension of services plan;
 - (n) annexation; and
 - (o) land acquisition. Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.
- (2) Categorical exclusions shall not apply in extraordinary circumstances where the bureau is proposing an activity:
- (a) upon sites with high erosion risk;
 - (b) where critical habitat for federally listed threatened and endangered species may be affected;
 - (c) where Native American religious and cultural sites may be affected;
 - (d) where archaeological sites may be affected;
 - (e) where historic properties and areas may be affected;

(f) where several related categorically-excluded individual activities may cumulatively result in significant impacts to the human environment because they will either occur closely in time, or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or

(g) where the activity would result in a violation of any applicable local, state, or federal laws or regulations.

History: 77-1-209, 77-1-301, MCA; IMP, 75-1-201, 77-1-121, 77-1-605, 77-1-903, MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

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